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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 489 OF 2018



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

"CALL TERMINATION AMENDMENT REGULATIONS, 2018"

**PURSUANT TO SECTION 4 OF THE ELECTRONIC COMMUNICATIONS ACT NO.
36 OF 2005, AS AMENDED**

I, Rubben Mohlaloga, Chairperson of the Independent Communications Authority of South Africa, hereby publish the Call Termination Amendment Regulations, 2018 in terms of section 67(8) of the Electronic Communications Act No. 36 of 2005, as amended to the extent as reflected in the Schedule

Stakeholders have until **7 September 2018** to submit comments on these Draft Regulations to CTRreview@icasa.org.za

A handwritten signature in black ink, appearing to read 'Rubben Mohlaloga', written over a horizontal line.

Rubben Mohlaloga

Chairperson

**ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005), AS
AMENDED
REGULATIONS**

The Independent Communications Authority of South Africa ("the Authority") has, under section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended, read with section 4(1), section 4(7)(b) and 67(8) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended made Regulations in the Schedule.

SCHEDULE

1. Definitions

In these Regulations -

"the 2010 Regulations" means the Call Termination Regulations, 2010/11, published in General Notice 1015 in Government Gazette 33698 of 29 October 2010; and

"the 2014 Regulations" means the Call Termination Regulations, 2014, published in General Notice 65 in Government Gazette 37295 of 4 February 2014.

2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended by -

- (a) the deletion of the definition "B0N";
- (b) the insertion after the definition of "ECS" the following definition:

"Fixed termination markets" means the market for wholesale voice call termination services on the network of each licensee that offers termination to a fixed location within the Republic of South Africa and excludes termination of internationally originated voice calls;;

- (c) the insertion after the definition of "Fixed Wholesale Voice Call Termination Service" the following definition:

"Mobile termination markets" means the market for wholesale voice call termination services on the network of each licensee that offers

termination to a mobile location within the Republic of South Africa and excludes termination of internationally originated voice calls;" ; and

- (d) the deletion of the definition "WON".

3. Repeal of regulations 3, 4, 5 and 6 of the Regulations

Regulations 3, 4, 5 and 6 of the Regulations are hereby repealed.

4. Substitution of regulation 7 of the Regulations

The following Regulation is hereby substituted for regulation 7 of the following regulation:

"7. PRO-COMPETITIVE TERMS AND CONDITIONS

- (1) The Authority has determined that the following market failures may recur in the absence of regulation:
 - (a) A lack of provision of access;
 - (b) The potential for discrimination between licensees offering similar services;
 - (c) A lack of transparency; and
 - (d) Inefficient pricing.
- (2) In order to address the market failures identified in sub-regulation (1) above, an ECNS and ECS licensee must charge fair and reasonable prices for wholesale voice call termination consistent with **Annexure A**.
- (3) In addition to sub-regulation (2), the Authority has determined that additional pro-competitive terms and conditions are necessary to correct the market failures identified in sub-regulation (1), which are to be imposed on the following types of licensees:
 - (a) A licensee that benefits from economies of scale and scope with a share of total minutes terminated in the wholesale voice call termination markets with more than 20% of total minutes terminated to a mobile location as at 31st December 2016.

- (b) A licensee that benefitted from economies of scale and scope with a share of total minutes terminated in the wholesale voice call termination markets with more than 20% of total minutes terminated to a fixed location as at 31st December 2016.
- (4) The Authority has determined that the following licensees have the characteristics mentioned in sub-regulation (3):
 - (a) Mobile termination markets:
 - (i) MTN (Pty) Ltd (MTN); and
 - (ii) Vodacom (Pty) Ltd (Vodacom).
 - (b) Fixed termination markets:
 - (i) Telkom SA SOC Limited (Telkom).
- (5) All licensees referred to in sub-regulation (4), must comply with the following additional pro-competitive terms and conditions:
 - (a) Publication of a Reference Interconnection Offer:
 - (i) Licensees identified in sub-regulation (4) must submit a RIO to the Authority for approval within forty-five (45) days of promulgation of these Regulations.
 - (ii) The RIO must comply with the requirements set out in **Annexure B**.
 - (iii) The Authority will assess a RIO submitted by a licensee within thirty (30) days of its submission.
 - (iv) Licensees identified in sub-regulation (4) are obliged to offer interconnection using IP-based protocols.
 - (v) Provided that all requirements in the RIO are met by both an interconnection seeker and provider, a request for interconnection based on the RIO must be concluded within thirty (30) days of such a request for interconnection unless otherwise agreed between the licensees.
 - (vi) A licensee identified in sub-regulation (4) must publish the approved version of its RIO on its website within five (5) days of receiving notice of approval from the Authority.

(b) Price Control: Cost-based pricing:

A licensee identified in sub-regulation (4) must charge wholesale voice call termination rates to a mobile or fixed location as specified in Table 1.

Table 1: Termination Rates:

| Maximum call termination rate for Large Operators | Termination rate to a mobile location | Termination rate to a fixed location |
|--|--|---|
| 1 October 2018 to 30 September 2019 | R0.12 | R0.08 |
| 1 October 2019 to 30 September 2020 | R0.10 | R0.05 |
| 1 October 2020 | R0.09 | R0.03 |
| | | |

... end of substitution”

5. Substitution of regulation 8 of the Regulations

The following Regulation is hereby substituted for regulation 8 of the following regulation:

“8. SCHEDULE FOR REVIEW OR REVISION OF MARKETS

The Authority will review the markets for wholesale voice call termination services, to which these Regulations apply, as well as the effectiveness of competition and the application of pro-competitive terms and conditions in those markets when the Authority deems it necessary but not earlier than three (3) years from the date of publication of these Regulations.”

6. Short Title and Commencement

These Regulations are called the "Call Termination Amendment Regulations, 2018" and will come into effect on 1 October 2018.

7. Substitution of Annexures A and B of the Regulations

The following Annexures of the Regulations are hereby substituted for Annexures A and B of the Regulations:

Annexure A:**APPLICATION OF THE FAIR AND REASONABLE OBLIGATION**

1. Principles of implementation of fair and reasonable obligation
 - 1.1. For the purposes of regulation 7(2) of the Schedule "fair and reasonable prices" are rates that are equivalent to the cost-based rates imposed on the licensees identified in regulation 7(4) of the Schedule.
 - 1.2. Licensees must charge the following rates:
 - 1.2.1. Reciprocal rates with the rate set for MTN and Vodacom if these licensee's offer termination to a mobile location within the Republic of South Africa; or
 - 1.2.2. Reciprocal rates with the rate set for Telkom if these licensee's offer termination to a fixed location within the Republic of South Africa.
2. A licensee not listed in regulation 7(4) of the Schedule may charge higher rates if:
 - 2.1. the licensee has a share of total minutes terminated in the wholesale voice call termination markets of 20% or less of total minutes terminated to a mobile location as at 31st December 2016; or
 - 2.2. the licensee has a share of total minutes terminated in the wholesale voice call termination markets of 20% or less of total minutes terminated to a fixed location as at 31st December 2016.

3. A licensee affected by regulation 2 of this Schedule must charge a rate in the following terms:

Table A1: Rate for termination to a mobile location

| | Termination rate |
|----------------------------------|-------------------------|
| 1 October 2018-30 September 2019 | R0.17 |
| 1 October 2019-30 September 2020 | R0.15 |
| 1 October 2020 | R0.13 |

Table A2: Rate for termination to a fixed location

| | Termination rate |
|----------------------------------|-------------------------|
| 1 October 2017-30 September 2018 | R0.09 |
| 1 October 2018-30 September 2019 | R0.06 |
| 1 October 2020 | R0.03 |

Annexure B:**1. Minimum content of a Reference Interconnection Offer ("RIO")**

A licensee listed in regulation 7(4) of the Schedule must develop their own RIO for the Authority's approval. The RIO must include at least the following:

1.1. General Legal Principles

- 1.1.1. Definitions of terms and abbreviations;
- 1.1.2. Requirements concerning the exchange and use of information for interconnection; and
- 1.1.3. Data exchange formats.

1.2. Initiating Negotiations and Proposing Amendments

Procedure for initiating negotiations as well as that for amending interconnection agreements, including:

- 1.2.1. how a request for interconnection is to be made;
- 1.2.2. to whom a request for interconnection is to be sent; and
- 1.2.3. the information that needs to be included in the application.

1.3. Description of Interconnection Services to be provided

- 1.3.1. List of interconnection services offered;
- 1.3.2. Full description of each interconnection service; and
- 1.3.3. Conditions governing access to services.

1.4. Schedule of Charges for Interconnection Services

- 1.4.1. Commercial and financial matters, including billing and collection procedures, and payment terms and conditions;
- 1.4.2. The full charge for each interconnection service. Where relevant charges should:
- 1.4.3. be broken down into or built up from the charges for the network components;
- 1.4.4. include an indication of any surcharges; and
- 1.4.5. include an indication of charging unit/s (e.g. per second);
- 1.4.6. Mechanisms for the review of charges; and
- 1.4.7. Billing services for third parties, where relevant (e.g. if operator is billing on behalf of resellers, other Individual ECS or other Individual ECNS).

1.5. Technical Characteristics

- 1.5.1. Comprehensive technical description of the interconnect interface(s), including the signalling protocol(s) used;
- 1.5.2. Full details of the availability and location of points of interconnection which shall include public internet exchange points (IXPs) at which the licensee has a presence;
- 1.5.3. Description of the physical arrangements for interconnection;
- 1.5.4. Description of traffic routing arrangements;
- 1.5.5. Details regarding access to numbers by the parties;
- 1.5.6. Requirements to ensure network security or integrity; and
- 1.5.7. The quality, availability, security, efficiency, and synchronization of the services provided.

1.6. Arrangements for the Establishment of Interconnection

- 1.6.1. Conditions governing service provision;
- 1.6.2. Traffic forecasting requirements and arrangements;
- 1.6.3. Arrangements for testing the operation of interfaces and the interoperability of services;
- 1.6.4. Fault management procedures (recording and clearing); and
- 1.6.5. Conditions governing bank guarantees, if any.

1.7. Other Legal and Procedural Issues

- 1.7.1. Provisions on procedures for review, termination, and amendment of interconnection agreements;
- 1.7.2. Limitation of liability and indemnity between licensees;
- 1.7.3. Penalty clauses; and
- 1.7.4. Dispute resolution arrangements and procedures, including the right of either party to request the Authority to intervene to resolve a dispute."

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